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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,511	01/27/2004	Edward Snow Willis II	555255012694	2513
43563	7590	10/15/2007		
MOFFAT & CO 427 LAURIER AVEUE W., SUITE 1200 OTTAWA, ON K1R 7Y2 CANADA			EXAMINER STEELMAN, MARY J	
			ART UNIT	PAPER NUMBER
			2191	
			MAIL DATE	DELIVERY MODE
			10/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/765,511

Applicant(s)

WILLIS, EDWARD SNOW

Examiner

MARY STEELMAN

Art Unit

2191

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

MARY STEELMAN
PRIMARY EXAMINER

Mary Steelman 10-11-2007

Continuation of 3. NOTE: "avoiding non-volatile memory items created under other non-volatile memory management schemes" will require further consideration.

Continuation of 13. Other: Amendments to the Specification will not be entered, as it constitutes new matter.

Applicant, additionally, has argued, in substance, the following:

(A) Applicant has argued the double patenting rejection, on page 13 and 14.

A terminal disclaimer is required because as a result of patent term adjustment provisions, patents and conflicting claims would not necessarily expire on the same day. Even if patents with conflicting claims would expire on the same day, ensuring enforceability only as long as they are commonly owned is still required. Arguments (page 13, A) are incorrect.

Applicant has correctly understood that this is a non provisional rejection.

Examiner maintains the prior nonstatutory double patenting rejection of the instant application over USPN 7,222,340.

(B) Applicant has argued the 103 (a) obviousness motivation used in the rejection of claims 2 and 11. Examiner maintains that Birum and Moore are in the same field of endeavor. It would have been obvious to a person of ordinary skill level in the art, at the time of the invention was made, to create unique version numbers and compare version numbers in order to insure comparing not only the same software but also the same version of the software. One would expect operating system version numbers to be uniquely identified. When updating / managing versions of memory items, it is obvious, to uniquely identify each memory item. Furthermore, such elements, as disclosed in the prior art, provide a predictable result, and an obvious use of common sense by one skilled in the art.

(C) Applicant has argued the 102(e) rejection of claims 1, 3-10a, 10b.

Applicant has argued that Birum fails to disclose a (claim 1 and 10a) "wireless device" and "registering with a wireless network."

Applicant has argued that Examiner has mapped a 'carrier wave', as disclosed in the prior art, to cited 'carrier' in claims 1 and 10a.

Applicant has argued that prior art does not disclose a writing step performed after said updating step is complete (claim 3).

Examiner points out that claim limitations are interpreted in light of the specification, but limitations from the specification are not read into the claims. Claim language is given the broadest reasonable interpretation. Applicant is requested to narrow the scope of the claim limitations to clearly present the invention. Applicant is requested to point to a location in the Specification that clearly defines the meaning of 'carrier'.

Birum disclosed 'wireless links' at col. 6, line 26, 'wireless media' at col. 6, line 65, and a 'wireless device' at col. 7, line 46. Registering with a wireless network occurs when the device interfaces with the network, using communication protocols (col. 9, lines 11-16). Regarding the limitation "writing step is performed after said updating step is complete", as an example, Examiner points to col. 5, lines 49-53, writing to the configuration file to be compatible with the new version.

Examiner has provided a cursory review of the After Final arguments. Claimed limitations are not in condition for allowance.